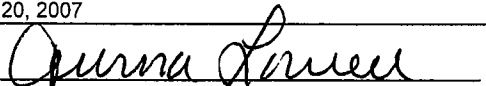
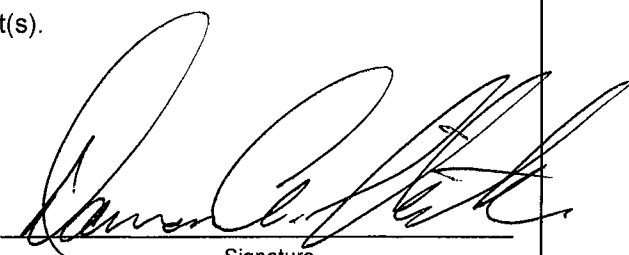


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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 74120-301407	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on February 20, 2007 Signature <u></u> Typed or printed Name <u>Aurora Lowell</u>	Application Number 09/827,352	Filed April 6, 2001	
	First Named Inventor Harry Edward Mussman, et al.		
	Art Unit 2662	Examiner MILLS, Donald L.	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>52,167</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number _____</p> <p> Signature <u>Damon A. Rieth</u> Typed or printed name <u>(303) 447-7739</u> Telephone number <u>February 20, 2007</u> Date</p>			
<input checked="" type="checkbox"/> *Total of <u>one</u> forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Mussman, <i>et al.</i> App. No.: 09/827,352 Filed: April 6, 2001 For: ALTERNATE ROUTING OF VOICE COMMUNICATION IN A PACKET- BASED NETWORK	Examiner: Mills, Donald L. Group Art Unit: 2616 Conf. No.: 2995 Docket No.: 74120-301407
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2007, VIA THE USPTO-EFS-WEB FILING SYSTEM.

/Aurora Lowell/
Aurora Lowell

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The Applicant is filing a Pre-Appeal Brief Request for Review herewith from the Final rejection dated October 17, 2006. This Pre-Appeal Brief Request for Review is proper because the present application includes claims that have either been twice rejected or finally rejected. Applicants' remarks in support of this Pre-Appeal Brief Request for Review follows. No amendments are being filed with the request. This request is being filed with a Notice of Appeal.

REAL PARTY IN INTEREST

The real party of interest in this Pre-Appeal Brief Request for Review is Level 3 Communications, Inc., assignee of the Application on Pre-Appeal Brief Request for Review.

RELATED APPEALS AND INTERFERENCES

There are no known Appeals or Interferences related to this Pre-Appeal Brief Request for Review.

STATUS OF CLAIMS

The present application was first filed on April 6, 2001 with claims 1-23. Claims 1-23 were finally rejected in the Final Office Action of October 17, 2006.

STATUS OF AMENDMENTS

Applicants submitted a response to the January 24, 2005 Office action on May 25, 2005. Amendments to independent claims 1 and 19 included in the May 25 response were entered. Applicants submitted an RCE and response to the August 10, 2005 final office action on February 9, 2006, in which amendments to claims 1, 10, 11, 19, and 20 were entered. Applicants submitted a response to the May 3, 2006 Office Action on August 3, 2006 without further claim amendments. Claims 1-23, as presented in the August 3, 2006 response, stand finally rejected or objected to. No amendments are outstanding.

ISSUES

Claims 1-9 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-7, 10-16 and 19-23 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited portions of EP Patent No. 1014633 to Bennefeld, *et al.* (hereinafter “Bennefeld”), in view of U.S. Patent No. 6,067,545 to Wolff (hereinafter “Wolff”). Claims 8, 9, 17 and 18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bennefeld, in view of Wolff, and further in view of the cited portions of U.S. Patent No. 5,956,339 to Harada (hereinafter “Harada”).

ARGUMENT

A. Claims 1-9 are not indefinite for failing to particularly point out and distinctly claim the subject matter as the invention.

The Office states that, regarding claim 1, it is unclear whether “directory” and “inbound” gatekeepers are resource management gatekeepers, gateway resources, or another type of gateway. The Office has requested further clarification and explanation. Applicant believes that claim 1 does particularly point out and distinctly claim the subject matter which Applicant regards as the invention. As the Examiner knows, the Applicant is allowed to be his own lexicographer. Although Applicant believes further clarification is not required, Applicant provides here a brief description of one particular embodiment.

An exemplary embodiment is illustrated in Fig. 3. This particular implementation is a distributed hierarchical implementation that separates resource management functions from other gatekeeper functions (e.g., admissions control, address translation, etc.). See *Application*, p. 4.

The implementation includes an inbound gatekeeper 3010, a directory gatekeeper 3020, and one or more resource management gatekeepers 3030 that each manage one or more outbound gateway resources 3040. *Id.* at p. 4 – 5; Fig. 3. Call attempts are sent to the directory gatekeeper 3020 for resolution to a gateway resource 3040. *Id.* The directory gatekeeper 3020 sends a request to a resource management gatekeeper 3030. *Id.* If there are gateway resources 3040 available to terminate the call, the resource management gatekeeper 3030 acknowledges the directory gatekeeper's request with the applicable gateway resource 3040, and the directory gatekeeper 3020 notifies the inbound gatekeeper 3010 of the available gateway resource 3040. *Id.*

Applicant believes that the foregoing explanation is sufficient clarification for one of skill in the art to make and use the invention of claims 1 – 9, and that claim 1 particularly points out and claims that which the Applicant believes to be the invention. As such, Applicant requests that the rejections under 35 U.S.C. §112 be withdrawn.

B. Claims 1-7, 10-16 and 19-23 are not unpatentable over Bennefeld (EP Patent No. 1014633) or Wolff (U.S. Patent No. 5,956,339).

The Office's rejections of independent claims 1, 10 and 19 contain clear errors. Specifically, Bennefeld and Wolff fail to teach or suggest all the elements of each of claims 1, 10 and 19. In addition, the Examiner's rejection of claims 10 and 19 omit one or more essential elements needed for a prima facie rejection.

Independent claims 1, 10, and 19 recite methods and systems for alternate routing of calls through a plurality of gateway resources, including, *inter alia*, “**dynamically determining an available gateway resource**”, “querying a selected resource management gatekeeper to **dynamically determine availability of gateway resources** associated with the selected node”, and “querying a first management gatekeeper ... to **dynamically determine availability of gateway resources** associated with the route”, respectively. Each of the independent claims are therefore directed at identifying an available gateway resource in a network through which a call can be initiated.

As currently understood by the Applicant, Bennefeld and Wolff are directed at distributing load across Gatekeepers and access server nodes, respectively. The Examiner acknowledges that Bennefeld does not teach dynamic alternate routing, but asserts that Wolff teaches a load rebalancing method, which can dynamically rebalance itself to optimize throughput by migrating client I/O requests from over utilized pathways to underutilized

pathways in gateways during operation. The Examiner is apparently asserting that Wolff's rebalancing is equivalent to dynamically determining a gateway resource as recited in claims 1, 10, and 19. Applicants respectfully disagree.

Wolff does not teach or reasonably suggest dynamically determining an available gateway resource for alternate routing of a call. First, Wolff's system is not relevant to an IP network in which multiple outbound gateway resources could be available for *initiating a call*. Second, Wolff's resources are volumes and file systems. *Wolff*, col. 7, ll. 33 – 38. According to Wolff, “[w]hat distributed I/O does require is *a known repository* for maintaining information as to the designated administrative server/node for each volume/resource.” *Id.*, col. 23, ll. 12 – 14. Clearly, Wolff's clients will specify in their requests exactly which file(s) they are requesting. In other words, a file that is requested is the specific resource that a client is requesting in Wolff. By contrast, in the independent claims, multiple gateway resources could be available through which a call can be initiated in an IP telephony network.

Claims 10 and 19 explicitly recite limitations that are not recited in claim 1, and yet the Examiner has lumped claims 10 and 19 into the same rejection. In doing so, the Examiner has omitted at least “selecting a route from the list of possible routes by querying a selected resource management gatekeeper” in the rejection. As such, a prima facie case of obviousness has not been set forth with respect to at least claims 10 and 19.

Furthermore, the Examiner's rejection of claim 20 is grouped with claim 11, thereby omitting essential elements of claim 20. Claim 20 recites “querying a second management gatekeeper associated with *a second list of routes*, to dynamically determine availability of gateway resources associated with one or more of the routes of the second list of routes.” Thus, a prima facie case of obviousness has not been set forth with respect to at least claim 20.

In addition, Wolff fails to teach or suggest “querying a second management gatekeeper associated with *a second list of routes*, to dynamically determine availability of gateway resources associated with one or more of the routes of the second list of routes.” For example, Wolff's aware client receives a redirect command from a utilization server that indicates only that redirection is required but not what path should be followed for the redirection. *Wolff*, col. 19, ll. 54 – 59. To optimize the choice of path the client queries each of the individual servers on the path to determine their utilization and selects that server which is least utilized. *Id.*, col. 20,

ll. 5 – 8. As such, Wolff neither teaches nor reasonably suggests a second list of routes associated with a second management gatekeeper.

For at least the foregoing reasons, Wolff and Bennefeld fail to teach or suggest all the claim limitations of any of independent claims 1, 10, and 19. Wolff and Bennefeld therefore necessarily fail to teach or suggest all the claim limitations of claims that depend from their respective base claims. As such, claims 1 – 7, 10 – 16, and 19 – 23 are believed to be allowable.

C. Claims 8, 9, 17 and 18 are not unpatentable over Bennefeld (EP Patent No. 1014633) or Wolff (U.S. Patent No. 5,956,339) or Harada (U.S. Patent No. 5,956,339).

The Applicant has reviewed the Harada reference and can find no teaching or suggestion of those elements of claims 1, 10 and 19 that are not taught or suggested by Bennefeld and Wolff; nor has the Examiner shown such a teaching or suggestion in Harada. As such, claims 8, 9, 17 and 18 are believed to be allowable for at least the same reasons their respective base claims.

Based on the foregoing arguments, Applicants assert that all claims are allowable over the prior art of record. Applicants respectfully request review of the arguments set forth herein and allowance of claims 1-23.

CONCLUSION

All of the claims remaining in this application should now be seen to be in condition for allowance. The prompt issuance of a notice to that effect is respectfully solicited. If there are any remaining questions, the Examiner is requested to contact the undersigned at the number listed below. Should any of the provided fees be incorrect, the Commissioner is authorized to charge or credit the Faegre & Benson Deposit Account No. 06-0029 as necessary, and is requested to notify us of the same.

Respectfully submitted,

Dated: February 20, 2007

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